



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-0128

Dawn A. Monk
Interim State Court Administrator

MEMORANDUM

DATE: June 3, 2015

TO: Chief Circuit Court Judges
Chief District Court Judges
Drug Treatment Court Judges
Circuit Court Administrators
District Court Administrators/Clerks

FROM: Dawn A. Monk, Interim State Court Administrator

RE: SCAO Administrative Memorandum 2015-01
Transfers for Problem-Solving Court Program Supervision
Rescinds SCAO Administrative Memorandum 2013-01

SCAO recommends that the procedure outlined in this memorandum be followed in transferring a case to a drug treatment court, veterans treatment court, or mental health court program, hereafter referred to as a problem-solving court. While other methods of transferring cases to problem-solving court programs established and operating under MCL 600.1060, *et seq.*, MCL 600.1200, *et seq.*, and MCL 600.1090, *et seq.* are possible, because of the inherent problems associated with these other methods, we recommend using only the method outlined below. (See Appendix A for issues associated with other methods.) Cases transferred to a problem-solving court program are transferred only for purposes of supervision; the transferring court retains jurisdiction over the individual until the final disposition of the case. MCL 600.1070(2); MCL 600.1206(2); and MCL 600.1095(2).

The recommended procedure for transferring supervision of cases to a problem-solving court program and for final case disposition by the transferring court is as follows:

1. The transferring court will contact the problem-solving court program receiving the potential transfer to determine whether the individual will be accepted. Before transferring supervision, the transferring court and problem-solving court program should agree upon the jail in which the participant would serve any program jail sanctions, when applicable.

2. The transferring court and the problem-solving court program will determine whether an individual may be admitted to the program under the eligibility and conditions for admission set forth in the applicable problem-solving court statute. The following circumstances should exist before an individual may be transferred to a problem-solving court program:
 - a. The individual must demonstrate either residency in the jurisdiction of the receiving problem-solving court program or the unavailability of a program in the transferring court's jurisdiction.
 - b. In addition, the problem-solving court and the transferring court must adhere to the conditions of MCL 600.1062(4) for drug treatment courts, MCL 600.1201(4) for veterans treatment courts, and MCL 600.1091(3) for mental health courts.
 - c. The individual must:
 - i. agree to cooperate with and complete a preadmissions screening and evaluation assessment,
 - ii. agree to cooperate with any future assessments as directed by the problem-solving court program, and
 - iii. sign a written agreement to participate in the problem-solving court program.
 - d. If the individual has been sentenced to a jail term by the transferring court, that sentence should be served in the transferring court's jurisdiction before the case is transferred to the problem-solving court program.
3. Before transferring drug treatment court or veterans treatment court supervision, the transferring court must place on the record the findings in MCL 600.1066 or MCL 600.1204, respectively, and accept a plea of guilty. Before transferring mental health court supervision, the transferring court must accept a plea of guilty or no contest or a conviction of a criminal charge. In the case of a juvenile being transferred to a drug treatment court or a mental health court, admission of responsibility must be accepted. The transferring court must take one of the following actions as appropriate in accordance with MCL 600.1070(1), MCL 600.1206(1), or MCL 600.1095(1):
 - a. For an individual who may be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the problem-solving court program, defer further proceedings (i.e., do not enter a judgment), or
 - b. Pursuant to agreement with the participant and the prosecutor, enter a judgment of guilt and allow the individual to prove to the transferring court his or her eligibility for probation or other leniency, but delay sentencing for up to one year in accordance with MCL 771.1, or
 - c. Pursuant to agreement with the participant and the prosecutor, proceed to sentencing and place the participant on probation or other court supervision in the problem-solving court program with terms and conditions according to the agreement and as deemed necessary.
4. The transferring court must obtain a judicial assignment from the State Court Administrative Office (SCAO) assigning the problem-solving court judge into the transferring court.

5. The transferring court must enter an order on SCAO-approved form [MC 394](#) (Order Transferring Supervision to Treatment Court Program) transferring supervision of the case to the problem-solving court program. The order will provide that:
 - a. The transferring court maintains jurisdiction over the individual until final disposition of the case but not longer than the probation period established under MCL 771.2.
 - b. The presiding judge of the problem-solving court program, assigned as a judge of the transferring court, is authorized to make all decisions associated with the individual's participation in the program including, but not limited to, an award of incentives, jail and non-jail sanctions, phase changes, and participation fees.
 - c. The individual shall comply with the requirements of MCL 600.1074(1), MCL 600.1208, or MCL 600.1097 by: (1) complying with all court orders, (2) paying all fines, costs, restitution, and assessments to the transferring court as ordered in the judgment of sentence, order delaying sentence, or probation order deferring judgment, and (3) paying any fee imposed by the problem-solving court program as allowed under MCL 600.1070(4), MCL 600.1206(4) or MCL 600.1095(3).
6. The transferring court must also:
 - a. Document any bench warrants issued by the problem-solving court judge during the individual's participation in the problem-solving court program by entering them into the transferring court's case management system. The problem-solving court judge is acting as a judge of the transferring court by assignment and, as a result, bench warrants are issued out of the transferring court. (See paragraph 8.)
 - b. Document any jail sanctions during the individual's participation in the problem-solving court program.
 - c. Collect payment on an order for fines, fees, restitution, and assessments, except problem-solving court fees.
 - d. Amend the judgment of sentence, order delaying sentence, or order of probation as necessary.
 - e. Comply with the agreement made with the individual for final disposition of the case upon successful completion of the problem-solving court program.
 - f. Send a copy of the transfer order (form MC 394) to the problem-solving court program. Upon request by the problem-solving court judge, the transferring court shall send any other documents from either the case file maintained by the clerk of the court or the probation file to the problem-solving court judge.
7. After receiving the case from the transferring court, the problem-solving court program will:
 - a. Maintain the case in the Drug Court Case Management Information System. Do not enter the case into the case management system of the problem-solving court program as a new filing.
 - b. Collect payment of any problem-solving court program fees. Receipt money using the court's case management/accounting system without opening a new case.
 - c. Notify the transferring court when the problem-solving court judge issues a bench warrant or sanctions the participant to jail.
 - d. Enter an order on SCAO-approved form [MC 394a](#) (Order of Discharge From Treatment Court Program) when the individual's participation in the problem-

solving court program is successfully completed or unsuccessfully terminated. Send a copy of the order to the transferring court.

- e. Maintain the problem-solving court program case records in accordance with the Michigan Trial Court Case File Management Standards and the General Records Retention and Disposal Schedule #16 - Michigan Trial Courts. All records maintained by the problem-solving court program are nonpublic and must not be maintained in the clerk of the court's office.
8. If a participant fails to appear for any hearing scheduled by the problem-solving court program, a bench warrant will be issued by the problem-solving court judge. (See paragraph 6.) The problem-solving court judge shall hold a hearing on the failure to appear, and if the judge determines that the participant should be discharged from the program, then the problem-solving court judge shall enter an order discharging the defendant from the program and immediately notify the transferring court.
 9. After receiving the Order of Discharge From Treatment Court Program from the problem-solving court, the transferring court will file the order and enter the final disposition of the case in the case management system.

Because of the inherent problems associated with other methods of transfer (See Appendix A), use of any method of transferring and processing transfers to problem-solving court programs, other than that outlined above, are **not recommended** by our office.

If you have any questions about the above-recommended transfer procedures, contact Jessica Parks at 517-373-6285 or parksj@courts.mi.gov. If you have any questions about the SCAO-approved order forms, call 517-373-2217.

APPENDIX A
CONCERNS WITH PRE- AND POSTPLEA
PROBLEM-SOLVING COURT TRANSFER METHODS

The State Court Administrative Office recommends that problem-solving courts only transfer **the supervision** of problem-solving court participants rather than transferring **the case** pre- or postplea. That means that the transferring court retains jurisdiction throughout the individual's participation in the problem-solving court program. If a court chooses to transfer a problem-solving court case pre- or postplea, the court should be aware of the following issues that may be encountered.

Preplea Transfers

Prior to a plea, the transferring court enters an order transferring the case to the problem-solving court and disposes of the case in its case management system as a transfer.

Concerns:

- There is no statutory authority for transferring the case to the problem-solving court before a plea is taken, or addressing whether the problem-solving court should take the plea, enter the order deferring proceedings, or proceed to sentencing under MCL 600.1070, MCL 600.1206, or MCL 600.1095.
- The transferring court will receive no payment for costs associated with preadmissions screening and evaluation assessment or other review performed to determine whether the individual is eligible for participation in a problem-solving court.
- If the transfer is between a circuit court and a district court, the receiving court may not have jurisdiction over the case type for purposes of trial and sentencing, should it be necessary because the individual is unsuccessful in the problem-solving court program. Additionally, the receiving court will not be able to enter the case into its case management system, causing difficulty with tracking the case, abstracting to the Secretary of State, and reporting criminal dispositions to the Michigan State Police.
- The transferring court counts a new filing and a transfer before the plea, but the originating court did not handle the plea. The receiving court is also counting a new filing and a disposition. Consequently, the case is counted twice; once by each court.

Postplea Transfers

In a postplea transfer, the transferring court makes the findings required by MCL 600.1066 for a drug treatment court or MCL 600.1204 for a veterans treatment court, accepts the individual's plea pursuant to MCL 600.1070 for a drug treatment court, MCL 600.1205 for a veterans treatment court, or the individual's plea or conviction pursuant to MCL 600.1094 for a mental health court and enters an appropriate order (order delaying sentence, order deferring judgment of guilt, or judgment of sentence and order of probation), including for the payment of fines, costs, assessments, and/or restitution, as warranted. The transferring court then transfers the case to the problem-solving court, specifying whether the case is to be transferred back after the individual completes the program (regardless of success), and closes the case in its case management system. The problem-solving court opens a "postjudgment" transfer case in its case management system.

APPENDIX A
CONCERNS WITH PRE- AND POSTPLEA
PROBLEM-SOLVING COURT TRANSFER METHODS

Concerns:

- It is not clear whether the transferring court has the authority to order the problem-solving court to transfer the case back upon completion of the program, or whether the problem-solving court statutes allow the court to do so.
- The receiving problem-solving court does not count a new filing or disposition when it receives the transferred case; therefore, it receives no caseload or weighted caseload credit for supervising the case.
- If the transferring court orders the problem-solving court to transfer the case back upon discharge of the individual from the program, there is no clear statutory authority permitting the problem-solving court to use judicial authority to collect any outstanding fees.
- If the transferring court does not order the problem-solving court to transfer the case back upon the individual's discharge from the program, then the transferring court will not be able to abstract to the Secretary of State or report criminal history to the Michigan State Police. If the problem-solving court abstracts to the Secretary of State or reports criminal history to the Michigan State Police it creates a new record, making it appear that the individual had two cases, rather than one.